

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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JANE DOE,

Plaintiff,

**NOTICE OF MOTION**

-against-

20-CV-02331(PMH)

DR. MARJORIE KING, KATHLEEN MARTUCCI,  
GLENN M. SELIGER, JACQUELINE VELEZ, LINDA  
EGENES, JOHN MATHEW, CHRISTINE KEHOE,  
ROSEMARY GALVIN, 1-100 JOHN ROES,

Defendants.  
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**PLEASE TAKE NOTICE** that upon the annexed Declaration of Daniel S. Moretti, sworn to December 7, 2022, and the exhibits annexed thereto; the accompanying Memorandum of Law, dated December 7, 2022; and all pleadings and prior proceedings herein, defendants DR. MARJORIE KING, KATHLEEN MARTUCCI, GLENN M. SELIGER, JACQUELINE VELEZ, LINDA EGENES, JOHN MATHEW, CHRISTINE KEHOE, ROSEMARY GALVIN, 1-100 JOHN ROES, this Court, before the Honorable Philip M. Halpern, United States District Judge, is granting Defendants' motion for summary judgment. Plaintiff, Jane Doe, is the successor, Glenn M. Seliger, M.D., in his official capacity. The caption accordingly; and proper.

**PLEASE TAKE**

(Doc. No. 136), answering


Dated: December 7, 2022

Motion granted. Plaintiff's opposition fails to rebut defendants' motion under Fed. R. Civ. P. 25(d), which provides, in relevant part, that "[t]he officer's successor is *automatically* substituted as a party" when a public officer sued in their official capacity ceases to hold office while the action is pending. (emphasis added). Indeed, Plaintiff appears to concede that Dr. King should be "removed from this action in her official capacity pursuant to Fed. R. Civ. P. Rule 25(d)," though Plaintiff then goes on to ask that she be added as a defendant in her individual capacity under Rule 21. (Doc. 145 at 7). The Court declines to consider Plaintiff's "cross-motion" for affirmative relief -- to join Dr. King in her individual capacity under Rule 21 and strike certain of Defendants' affirmative defenses -- that was improperly made via her opposition brief.

Accordingly, defendant Marjorie King, M.D., is hereby substituted under Fed. R. Civ. P. 25(d) with Glenn M. Seliger, M.D., in his official capacity. The caption of this action shall be changed accordingly to reflect the substitution.

The Clerk of Court is respectfully directed to terminate Dr. Marjorie King as a defendant in this action.

SO ORDERED.

  
Philip M. Halpern  
United States District Judge

Dated: White Plains, New York  
December 16, 2022